



Neutral Citation Number: [2023] EWHC 3063 (Admin)

Case No: CO/1550/2023

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 1 December 2023

Before:

Mr Jonathan Glasson KC sitting as a Deputy Judge of the High Court

Between:

THE KING	<u>Claimant</u>
On the application of TS	
(A Child acting by her Mother and Litigation	
Friend LS)	
- and -	
THE LONDON BOROUGH OF HACKNEY	<u>Defendant</u>
-and-	
BAYIS SHELI	
	<u>Interested Party</u>

**Mr Stephen Broach and Ms. Ella Grodzinski (instructed by Mr Alex Rook
of Scott-Moncrieff, Solicitors) for the Claimant**

**Mr Ali Reza Sinai (instructed by London Borough of Hackney Legal
Services) for the Defendant**

The Interested Party did not appear and was not represented.

Hearing date: 14th November 2023

Approved Judgment

This judgment was handed down remotely at 10.30 a.m. on 1 December 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR JONATHAN GLASSON KC SITTING AS A DEPUTY JUDGE OF THE HIGH COURT:

1. The Claimant, “TS”, is a significantly disabled child who brings this claim for judicial review by her mother, “Mrs LS”. The claim is brought against the London Borough of Hackney (“the Defendant”). The interested party, Bayis Sheli (“BS”) is a specialist residential care provider that is able to meet TS’s religious and cultural requirements. The interested party has taken no part in these proceedings and was not represented at the hearing, although a representative of BS was in attendance.
2. The identity of the Claimant was made subject to an anonymity order by Lang J on 28 April 2023 and at the hearing I ordered that anonymity should be continued.
3. The Claimant seeks to challenge by judicial review the Defendant’s “Child and Family Assessment” dated 17 February 2023 (“*the Assessment*”) and its “Care Package Panel-Review” decision dated 28 March 2023 (“*the Panel Decision*”). There are three grounds of review:
 - (a) The Defendant failed to complete a lawful assessment (“*Ground A*”);
 - (b) The Defendant has breached its duty under section 20(1)(c) of the Children Act 1989 (“*Ground B*”); and
 - (c) The Defendant made an irrational and unlawful service provision generally (“*Ground C*”)
4. The effect of the two decisions under challenge was to reject the request for TS to be accommodated for 2 nights a week at BS and for further additional care.
5. For the purposes of the hearing, I was presented with a bundle of documents and correspondence as well as a bundle of authorities. Both parties submitted skeleton arguments in advance of the hearing and made detailed oral submissions. I am grateful to all counsel as well as those instructing them for their assistance.
6. The judgment is divided into the following sections:
 - a) Procedural background and two preliminary issues
 - b) The factual background
 - c) The impugned decisions
 - d) Events subsequent to the impugned decision and evidence filed.
 - e) The legal framework
 - f) The grounds of challenge
 - g) Disposal and relief

A) PROCEDURAL BACKGROUND AND TWO PRELIMINARY ISSUES

7. The Claimant issued the claim for judicial review on 28 April 2023. When doing so the Claimant made an application for urgent consideration and for anonymity. The same day Lang J granted anonymity, certified the claim as fit for expedition and ordered an abridged timetable for the Defendant to file its Acknowledgment of Service and its response to the application for interim relief.
8. Mr Dexter Dias KC, sitting as a Deputy Judge of the High Court, refused permission for judicial review and the application for interim relief on 7 June 2023. However, on 11 July 2023, Mr Richard Clayton KC, sitting as a Deputy Judge of the High Court, granted permission and also ordered interim relief following an oral hearing. The Deputy High Court Judge ordered that until final determination of the claim or future order the Defendant should accommodate TS at Bayis Sheli on two nights per week.
9. Two preliminary issues were raised at the start of the hearing.
10. First, the Claimant made an application on 23 October 2023 for permission to rely upon the 6th witness statement of LS, the Claimant's mother. That was unopposed by the Defendant and as the statement provided a helpful updating account, I granted the application.
11. The second procedural issue concerned an objection that was made to the final sentence of paragraph 14 of the Defendant's Skeleton Argument, filed on 1 November 2023, which stated: "*TS clearly understands her current split residence because she ticked the boxes of the attached sketch for the social worker during her meeting at which she said that she does not want to remain at BS for longer periods*". Objection was also made to the sketch that was attached to the Skeleton Argument and which was also referred to in paragraphs 37 and 70 of the Skeleton Argument. The Claimant's solicitors had promptly objected to those references in a letter dated 2 November 2023 where they argued that it was wrong to introduce "*new and highly prejudicial evidence via the skeleton argument, without any evidence from your client to support that position*". The Claimant's solicitors also drew attention to the evidence of Dr Keir Shiels, Consultant Paediatrician at Great Ormond Street (discussed in more detail below) as to the reliability or otherwise of what TS was reported to have said. On 10 November 2023 the Defendant's solicitors responded in an email setting out details of a visit by Ms Pereira, the family social worker, to see TS at her school when the sketch was drawn. It was argued that there was "*no need to file yet further evidence at this late stage*".
12. In my judgment, if the Defendant wished to rely on the sketch and the social worker's account of that meeting then the Defendant should have filed a witness statement. In any event, I regard what was reported to the social worker to be at best marginal relevance to the issues before the Court in this judicial review which is focused on the lawfulness or otherwise of the two impugned decisions. Moreover, what TS may or may not have said to Ms. Pereira has to be seen through the prism of an understanding of TS's medical conditions.

(B) THE FACTUAL BACKGROUND

13. TS is now aged 13 and is significantly disabled. She lives at home with her parents and her brother ("*AS*"). TS's family are members of the Charedi (sometimes referred to as Orthodox) Jewish community in North London. She had six siblings, but her sister died

approximately seven years ago having been born with hydrocephalus and Hypoxic Ischemia. Four of TS's siblings have left home but her brother, aged 14, also lives at home. Both of TS's parents themselves have a number of significant medical problems.

TS's medical condition

14. TS's medical condition was summarised in the Panel Decision:

“[TS] is a child with a diagnosis of William's Syndrome which is a rare and complex condition. Children with William's Syndrome experience a range of difficulties, including sensory issues, difficulty forming relationships with peers and being prone to anxiety and depression. They also often experience a host of associated health issues, for example, cardiac issues, kidney problems, difficulty with sleep, growth, puberty and joint issues, problems with fluid and food intake, prone to urinary tract infections and constipation. [TS] receives input from a number of health professionals at a number of NHS trusts including the Whittington Hospital, Great Ormond Street Hospital (GOSH) and Hackney Ark. [TS] has had various investigations, and has numerous check-ups/monitoring appointments e.g. with cardiology, urology and nephrology. A consultant paediatrician at the Whittington Hospital, Dr John Moreiras, oversees and coordinates TS's treatment and care at various trusts and is her lead clinician. He provided the following information about her medical needs for her last review: Diagnoses: 1. Williams syndrome (confirmed deletion at 7q LL); 2. Body segment disproportion; 3. SGA with failure to catch up growth (birth weight 2.5 at 40 weeks); 4. Normal growth hormone response to glucagon stimulation March 2015, peak growth hormone 14.1 mcg/L; 5. Pulmonary stenosis mild (under GOS Cardiology) review; 6. Left kidney positioned at level of left iliac crest with slight malrotation/ left duplex system, no nephrocalcinosis; 7. Transient hypercalcaemia of infancy; 8. Persistent problems with toileting; 9. Concern regarding sleep; 10. Hypothyroidism; 11. Previous history of psoriasis; 12. Genetic surveillance/family history of NF2; 13. Hyperacusis; 14. Dental pain; 15. Puberty Concerns”

15. Dr Keir Shiels, a Consultant Paediatrician in the Complex Medical Care Service at Great Ormond Street, has treated TS and, in a letter dated 27 April 2023, sets out a helpful account of the complex nature of Williams Syndrome:

“[TS] has Williams Syndrome, which is a very challenging condition. It is rare: well enough described that paediatricians may be aware of its physical features, but rare enough that an average paediatrician may not have had any longterm contact with any child with the condition throughout the first fifteen years of their career. I would not expect GPs, or even many Paediatric Specialists, to have a deep knowledge of the behavioural presentations of Williams Syndrome in adolescence, if they didn't have a patient with the condition 'on their books'.

Williams Syndrome is so rare that there is no NICE Guideline for its management.

...The behavioural problems that children with Williams Syndrome face are incredibly challenging. Such children have very limited danger-awareness, if none at all. They also exhibit some rather paradoxical behaviours that are challenging to explain in writing: for example,

...

3) The apparent happiness and willingness to please strangers is a significant impediment to accurate behavioural assessment by healthcare professionals. Frequently, doctors and social workers are faced with a relatively enthusiastic and

happy child who answers questions excitedly, often giving the answers that they think their interviewer wants to hear. They are very keen to 'get the answers right' and prove themselves. This can manifest as children with Williams Syndrome telling healthcare professionals, in relatively clear advanced vocabulary, almost the exact opposite of what their parents have reported (eg saying they are always happy with many friends, when they have no friends and suffer from profound anxiety). Children with Williams always have a very jolly and excited appearance that can be at odds with the stories their parents come out with.

[TS's] behaviour has been described as *deceiving* in meetings. I need to point out that this has a different meaning from the word *deceitful*. [TS] is not *lying deliberately* or *covering things up* (which would be *deceitful*). But the way she presents to strangers is certainly *masking the true picture of day-to-day life*. This is not something she can help. But, rather like The Wizard of Oz, there is a different truth 'behind the curtain' compared against her outward appearance to strangers.

It is rare that any paediatrician will offer the advice not to listen to a child, or not to rely on clinical examination findings. However, in the case of Williams Syndrome, it is *unusually essential* to place more weight on the stories that parents relate, rather than the behavioural assessments of health and social care professionals. Parents can frequently provide videos of impulsive behaviour, tantrums, bouts of anxiety, dangerous thrill-seeking and self injurious behaviours that are quite out of keeping with the clinical assessments that have been witnessed by care providers.

It is not uncommon for parents simply *not to be believed* when they say that their child is waking up at 4am and breaking out of the house in nightly bouts of anxiety, when they seem so happy and content in front of a psychiatrist or social worker.

...
[TS] is an unusual case from a care point of view. Her parents are unusually proficient in managing and organising their lives around the needs of a disabled child: so much so that they have even co-founded a respite centre. If *they* are struggling to cope with their daughter's behaviour, it is evident that an average family would have 'hit a brick wall' months, if not years, earlier. It is in the nature of [TS's] condition that her true behaviours 'behind closed doors' will be disarmingly extreme, dangerous and impulsive compared with how she seems when observed by strangers."

The 2022 Care Panel Review

16. On 8 June 2022 there was a Care Panel Review which was then considered by a Panel on 14 June 2022. The Panel was chaired by Mr Stephen Jahoda. In the Analysis section of the Care Panel Review it was recorded that:

“There is a very high level of support already being provided for [TS] based upon her needs. It was felt that [TS] would benefit from having a better night time routine and some further work could take place, delivered in conjunction with CAMHS and the care agency, to try and support the family around this. An increase has been agreed to provide support around additional hospital appointments as [TS] does have a lot of appointments and Mrs [LS] feels that she needs support with this. Panel were of the view that the work with CAMHS needs to be prioritised as many of the concerns raised by the family relate to behavioural issues/concerns. It is recommended that the social worker and CAMHS meet with the parents and discuss the decisions and outcomes regarding the care package and ongoing support that is needed for [TS].”

17. The Panel decided care should be funded:

“-21 hours per week for personal care via North London Bikur Cholim
-17 hours per week for social activities via North London Bikur Cholim
-12 short breaks overnights
- 12 hours per month to assist with hospital appointments.”

18. Finally, the Panel decided that there should be a further Care Package Review in June 2023.

The adequacy of the 2022 care package

19. In her first witness statement Mrs LS commented on the 2022 care package and said:

“In total therefore, we received 42 hours of support per week from paid carers. If I estimate that [TS] is at school for 6 hours a day, but attends only 4 days a week on average (it is often less), that totals 66 hours a week when she is out the home or with paid carers (42 plus 24 hours). Ignoring that there are often times when 2:1 support is needed, that still leaves 102 hours per week, or 14.5 hours per day, that my husband and I are without any support at all when caring for [TS], and our son [AS]. During the school holidays this increases to 126 hours, or 18 hours every day where we are without any support.

We have always maintained that this package was wholly inadequate to meet [TS’s] care needs, and that we would eventually simply not be able to cope.”

The 23 January 2023 letter from the Claimant’s solicitors

20. On 23 January 2023 a letter was sent to the Defendant from Rook Irwin Sweeney LLP, who were the solicitors then acting for the family, setting out in considerable detail the concerns as to the adequacy of TS’s care package. The letter ran to 11 pages and emphasised that the family were now at “*crisis point*”. In the summary section it was stated:

“The family consider that the support that they are currently receiving is plainly inadequate, and has left them at crisis point.

Importantly, even when carers funded by the local authority are supporting TS, her behaviour still demands her mother’s support, at times for 2:1 care and at times just for her mother’s attention. TS’s mother has at times felt that she cannot continue to care for TS, and the family have recently considered requesting that she is placed full time at Bayis Sheli. We stress that this is not their position, but they do not believe that they can continue to properly care for TS without significant additional support.”

21. The letter set out an “average” week day for TS. It is worth setting that account out in full as it was accepted that it gave an accurate picture of the day-to-day reality of caring for TS:

“*6am-850am*

TS wakes up. A carer is usually on hand to help her and her mother with all personal care and to get her ready for school.

TS may have soiled herself due to her constipation, which happens perhaps once or twice a week.

She is usually very anxious when she wakes, and often complains that her heart is beating fast, and then that she feels nauseous, which causes her to get even more anxious.

Sometimes she will start crying, but will say she is not sure why. She requires constant support and reassurance to reduce her anxiety before it becomes a full breakdown.

She requires a shower, especially if she has soiled herself, but she hates water due to her sensory issues, and so this is always a very big struggle. It requires 2:1 support from mum and carer. TS will resist, and sometime it is abandoned.

She has psoriasis between legs and also on her hair and scalp, which needs special treatment, mostly prepared in the evening but also sometimes in the morning. Cream is applied twice per day. On the advice of her specialists, her hair is also meant to be washed twice per day; however, TS often resists this.

She then needs assistance with brushing her teeth, taking her medication (see below) and then dressing. These tasks can all be a struggle. She cannot dress herself, and sometimes it needs 2 people if she is resisting. It all depends on her mood and whether her anxiety has been reduced. Often she needs to be calmed with a little massage or other relaxing techniques.

She is now in a brace, which is building up to 24 hours a day. She hates it, and says it itches her.

The next [sic] struggle is then breakfast. Eating is always a struggle, and TS was hospitalised approximately 2 years ago to see why she would not eat. Trying to get her to eat is a very big struggle every morning. At the moment she will eat cocopops but only perhaps 3 spoons, and so mum and carer try to get her to eat more. She has a very small variety of food she likes and her weight is a concern. Carer/mum will try and distract and bribe etc so that she eats, but she can sometimes go without eating breakfast. Mealtimes can sometimes take up to an hour.

She then needs to take more medication. In the morning alone she needs 4 different tablets, one syrup and 2 powders all before leaving for school. Again, on a bad day she will resist taking these. Only mum can provide the medication, not the carer.

Finally, TS will not go to school without massage to relax her before leaving the house – she sits on mum’s lap whilst the carer gives a massage, and mum tells her story so she can relax. This takes around 10-15 mins to calm her, and get ready to school. Without it, it is likely that she will not go to school

...

8.50-3.30

At school during term time. See below re activities in these hours. But in school holidays, this is especially difficult – akin to the description below of activities from 3-6pm

3-6pm

No 2 days are ever the same day, it all depends on TS, but it is likely that mum and carer are present throughout. On a good day, mum may be in another room of the house.

Usually TS comes home angry due to noise or something has in her eyes gone wrong at school. She can bang doors, shout etc., and so the first task is usually to try calm her down, which mum and carer do together, do breathing exercises and massage to calm her down. At times, TS can become very angry if she is asked to do something she doesn't want to do. TS's parents often have to repeat instructions multiple times, and then ask her to repeat these instructions herself to ensure that they have been heard and understood. This increases the times required for various tasks throughout the day.

It is very hard for a carer to take her out as she hates going out due to her anxiety, but equally does not want to do anything for too long. She therefore needs to be constantly entertained, perhaps with cutting, colouring, baking, washing dishes etc. Her mood can change drastically so even on a good day, everyone is on 'guard'.

Once a week (Tuesdays) she attends Step by Step for 3 hours

6.8.30pm

Another very difficult period of the day. Mum will have made dinner, she and the carer usually then assist TS to eat. As above she does not like to eat and can be very difficult. It needs 2 people. She runs up the stairs, resists etc, and so mealtimes can often take an hour.

TS's brother comes home around 6.15pm, he eats and then leaves at around 7.30pm to go back to synagogue. Mum needs to give him some time despite TS fighting for attention.

More medication needs to be administered – she needs to have an injection in her bottom which she resists and so needs 2 people, on top of 4 other tablets and 2 powders.

She then needs a bath, with all the struggles as set out above. TS strongly resists this, so it takes a lot of time. Depending on the hours used already, mum may now be alone doing these tasks TS requires assistance with toileting. Without her back brace, this can take anywhere between a few minutes to 15 minutes. It takes longer when she is wearing her brace. She requires support with cleaning, and sometimes she can use the toilet, be cleaned, and then immediately use the toilet again.

This can happen several times before she is completely clean. Sometimes TS will be supported to take a shower in order to clean her after using the toilet. TS gets very embarrassed and upset during this process, and she feels like she has to keep apologising. This can make the task longer to perform.

8.30-11pm

TS requires almost constant supervision in order to settle for the night. This can include gentle exercises, massages, but will always require adult support. TS's parents also try and support her with physiotherapy exercises, which she often resists.

She is now very active, constantly getting out of bed, and will almost never fall asleep before 11. She has a problem with her bladder, so will regularly need assistance to go to the toilet, as well as often having an accident and so needing to be changed etc. She cannot go to the toilet on her own in her brace. She also cannot be left alone for anything but very short periods of time or will make a mess or get into dangerous situations like trying to leave, use the microwave etc. The family are constantly on guard

12am

TS usually wakes around this time and gets out of bed wanting chocolate or something similar. TS experiences sleep deprivation as she struggles to fall asleep and frequently wakes up during the night. TS's sleep is also severely disturbed as a result of both her toileting needs and her anxiety. She suffers from nightmares, as well as the fear of having nightmares when she is due to go to bed.

1am

TS will usually get out of bed at this time and need to go to the bathroom which she needs support with

3am

Although the time is not consistent, TS will wake on average at least once a night with a nightmare and needs a long time to settle.”

22. Alongside the diary an indication of “*hours of support needed*” was given in relation to each entry. In conclusion, Mrs LS’s solicitors said:

“In order to continue to care for TS at home, her family require the following support:

1. Of the 18.5 hours of care needed when she is not at school, the family seek 8 hours of care per day. We consider this to be more than reasonable in the circumstances. This needs to be increased by an additional 6 hours per day when she is not at school. Given that this is approximately 50% of the year, this means an average over the year of 11 hours per day. Please note that if this level of support is provided, the family will continue to meet TS’s night time care needs other than those addressed at point 2 below. This totals 77 hours per week, and would include the time in the care package for personal care, social activities and hospital appointments (so an increase from 41 as per the current care plan).

2. 2 nights per week of respite at Bayis Sheli, so that her parents, and her mother in particular, can get some rest and ‘recharge her batteries’ to continue to care for TS for the remaining 5 nights.

3. 4 weeks a year of camp, 2 weeks in the summer and 2 weeks in the winter, for TS to enjoy and for proper respite for her parents.

...

We trust it is clear from the above that our TS is a much-loved member of her family, and that her parents are doing all they can to meet her needs, but that additional support is urgently required to avoid a crisis occurring.

We request that the current assessment process is concluded in a timely manner, and that the care provided is increased to 77 hours per week, plus 2 nights per week of respite at Bayis Sheli, and 4 weeks a year of camp.”

23. At one stage in his oral submissions Mr Sinai, counsel for the Defendant, described the letter as a “*negotiation*” on the part of the Claimant’s family. He accepted however that any lawful assessment of TS would require detailed engagement by the Defendant with the points that had been set out in this letter. That would not involve a line-by-line response he said but a clear and reasoned response to the care needs that had been set out.

(C) THE IMPUGNED DECISIONS

The Assessment

24. The Assessment is recorded in a form that extends to 24 pages. The Claimant makes no criticism of the information that is recorded in the Assessment and accepts that it accurately reflects the information which TS’s family gave to the Defendant. The focus of the Claimant’s criticism is on the section entitled “*Our Assessment of your current situation*” and the absence of any analysis of the Claimant’s needs as well as the absence of a realistic way forward. That section states:

“Mr and Mrs S, the child and family assessment was initiated because there had been a few occasions that TS had managed to get out of the house and go missing, sometimes for several hours. In December 2022 a lock was placed on the front door with a code to prevent it from being opened from the inside, thus significantly reducing the risk of her absconding again from home.

Despite this, TS continues to require a high degree of supervision and support and the letter from your lawyers referred to you as being at crisis point and needing more support. Your letter provides a lot of detail about TS, the reality of her high care needs and the impact this has on you as her parents and a family. Mrs S, based on our conversations and our visits, it appears that you find the experience of caring for your daughter when you are on your own exceedingly stressful and anxiety provoking. You told us about a time when TS had two health appointments that were spaced apart at a hospital and you did not know how you were going to keep her entertained in the interim. You have consistently said you do not feel you have sufficient help with TS and the care package hours are not sufficient. Your lawyer highlighted that the current care package means you continue to provide TS with a lot of her care as 'her behaviour still demands her mother’s support, at times for 2:1 care and at times just for her mother’s attention'. We agree that TS is a child with a strong attachment to you Mrs S, and who loves your undivided attention. The current care package is largely focused on supporting TS at home and we would like to explore alternative ideas to give you a regular and consistent break from your caring responsibilities. We were struck by [AS]’s wish to spend more time with you without his little sister being around and we would like this to happen too. We would like to work with you both to ensure that TS's care package is working in everyone's best interests in the family. One idea which can be explored as part of the review is for TS to attend Step-by-Step on a more regular basis. TS is now a teenager and the focus will be increasingly towards supporting her to develop her independence and social skills outside of the house. More time at a provision such as Step-by-Step would help to provide her with this.

TS is a child with complex health needs and under the care of numerous services and NHS trusts. You expressed at the TAC meeting that you feel overwhelmed by the number of health appointments and the sometimes contradictory information and guidance given to you by professionals. At the meeting some ideas were beginning to be formulated about how to make things easier for you, such as joint paediatric reviews, the development of a single health plan and the three psychologists working more collaboratively. We believe these are positive ideas and further work can be done to ensure that services and support is more streamlined. For example, where possible ensuring that appointments at places such as Hackney Ark are scheduled for the same day. As your family are at crisis point and are considering that TS may need to be cared for outside of the home unless something changes, we believe it would be beneficial for TS to be supported through a Child in Need plan. This is a framework which would ensure that services and support are coordinated and everyone is working together. We have briefly discussed this with you on our last visit and you agreed to this in principle. You said you welcomed the idea of having someone to help follow up on actions from the TAC meeting.”

25. The Assessment recorded that subsequently Step by Step had expressed concerns about TS spending more time there:

“Following this email, we contacted Step-by-Step to explore the scope for [TS] to attend on a more regular basis. The manager of the service, Esther Hoffman responded with the following... Regarding the after school program, although we have availability Mondays to Thursdays 3.30pm –6.30pm, I am very concerned about [TS] joining after school everyday. This may not be in [TS’s] best interest due to her anxiety. Somehow, she presents very differently when she has come after school than when she comes in the morning, and can be rather difficult after school. We always want children to be happy and thrive in our programmes and [TS] does and should continue to attend dance class but that is after being home for a couple of hours.”

26. The Assessment was signed by Ms. Lauren Hills, Social work practitioner on 16 February 2023. On 23 February 2023, Ms. Jhannell Dyer, Consultant Social Worker, signed it off and commented:

“Mr and Mrs S it is evident that you are working hard to ensure that TS's needs are met in the home and she is kept safe. We can see that you have a lot of caring responsibilities due to the complexity of TS's additional needs. I think it will be helpful for a child in need plan to be implemented to coordinate support and ensure that the professional network are working together to provide a coordinated approach. A review of TS's care package will further explore any changes that are required to support TS and your family.”

27. The form recorded that the next steps were a Care Package Panel meeting and a Child in Need Plan. The former was allocated to Ms. Pereira and the latter to Ms. Hills.

Family response to the Assessment

28. The family received a copy of the Assessment by email on 23 February 2023. On 2 March 2023 the Claimant’s solicitors wrote to the Defendant. They noted that the Assessment had correctly recorded that the family were at “*crisis point*” and that additional care needed to be put in place urgently.

29. The Claimant's solicitors commented on the fact that the Assessment had concluded that:

"One idea which can be explored as part of the review is for [TS] to attend Step-by- Step on a more regular basis" notwithstanding the fact that Step-by-Step's Manager had been "very concerned" about TS joining after school every day." They added that they had contacted the Step-by-Step Manager who had stated that she thought TS would refuse to attend Step-by-Step after school other than very occasionally. She thought it would not be in TS's best interests if it was proposed that TS attend any more frequently."

The Panel Decision

30. The Panel's Decision document runs to 19 pages. It sets out a significant amount of factual information which, Mr Sinai accepted, duplicated the information in the Assessment. Consequently, the Claimant made no criticism of the factual information recorded in the Panel Decision. Again, the Claimant's criticism was focused on the lack of analysis by the Panel and the eventual decision as to the care package.
31. In the section headed "*Updated assessment of the parents/carers ability to meet the child's needs, to include the impact of any care package support offered to date and whether any safeguarding concerns have arisen*" the document states:

"Mr and Mrs S both have health difficulties which impact on their ability to care for TS. Mrs S told us that she experiences anxiety and depression and is prescribed Pregabalin and Bupropion. She stated that she feels stressed and anxious all of the time when TS is around or when she has to take her to appointments. At her last care package review she said she experiences migraines, brain fog, chronic and recurrent urine infections and suspects she has Long Covid. She takes Candesartan for migraines and Hiprex and Betmiga for urinary tract issues. Mrs S also shared that she has issues with the enzymes in her liver which leave her feeling tired and exhausted. Mrs S's health issues affect her ability to care for TS in several ways. She is always exhausted and drained. Sometimes she has to lie down with TS in the room and lock the door with her in the room to keep her safe. When she is in a lot of pain, she finds it difficult to sit on a chair and it hurts to walk. From around 6pm in the evening Mrs S told us she cannot move or function. She said sometimes she feels like running away from everything.

Mr S has a diagnosis of Neurofibromatosis type 2 (NF2) which is a genetic condition that causes tumours to grow along the nerves responsible for hearing and balance and has resulted in some hearing loss. He has a tumour in his brain which is being monitored and may require an operation at some point. Mr S uses a CPAP machine at night because he experiences sleep apnoea. When we asked you the reasons why TS's existing care package hours are not sufficient. He (sic) said that the way the hours are being used currently means that there are no hours left over by the weekend. He gave the following reasons about the things that make it difficult for him to care for TS:

- TS has lots of medical issues
- TS displays very challenging behaviour and can be violent
- TS finds it hard to express her emotions

- TS experiences constant anxiety which has gotten much worse. You need to keep her busy all the time to help with her anxiety.”

32. Mr Sinai accepted, as he was bound to do given the plain terms of this section, that despite the section’s heading there was in fact no “*updated assessment*”: it simply sets out the previously expressed concerns of TS’s family.

33. In the section headed “*Views of child’s mother and father, and anyone with parental responsibility, on the care package support that has been offered and is required going forward*” there is a detailed recital of the discussion that took place with Mrs LS. It was noted that Mrs LS had said that:

“it’s not possible to continue like this and she has the backup of all the doctors that agree that she needs more support. She is exhausted and all the family is exhausted and she feels that this is too much for just one mother to take care of. She added that from the last three months to now TS’s behavioural issues are worse and she feels that there is a limit and she is at her limit. She never wanted her daughter to go to respite but she feels that’s impossible at the moment.”

34. It was noted that Mrs LS “*would like for her daughter to stay at Bayis Sheli 2 nights per week and then on the days that she stays at home she would like to have support from 3:30 to 10 PM and then a carer in the morning from 6 to 9 AM. This is the support that she feels is necessary for her to be able to keep TS at home.*”

35. The form set out the Proposed Care Package:

“Since the Child and Family Assessment was completed in February 2023, it seems that TS’s anxiety has gone worse and this has affected her mood in general and makes it more difficult to meet her needs. TS has been assessed and is working with an extensive network of health professionals that are clearly working to support her.

TS has complex health needs and requires a lot of support to make sure her needs are met. Since I became involved with the family, Mrs S stated several times that she feels she is not able to have TS at home anymore without further support. It seems that the family is at a crisis point and requesting support from all the professional network.

TS has been supported by DCS for several years and as her needs increased, the carepackage of support has increased as well. At the moment TS has a quite extensive care package of 38 hours per week for personal care and social activities, 12 overnights of respite per year and 12 hours per month for medical appointments.

Mr and Mrs S feel that this support is not enough and are requesting a very large increase in the care package. Mrs S Stated that in order for her to keep looking after her daughter at home she needs to have two overnights of respite per week and 45 hours per week for personal care and social activities. Mrs S added that on the days that TS does not have overnight respite she would need support from when she comes home from school at around 4 PM to 10 PM and then in the morning from 6 AM to 9 PM. This is the level that the family feels necessary in order for them to keep meeting the needs of their daughter. Both Mr and Mrs S have health issues which impact on their capacity to care for TS.

I believe that the family would benefit from an increase on the care package, especially around overnight respite. TS's needs have changed since the last review of the care package and her levels of anxiety are higher. She is having more difficulties sleeping and her mood swings have an impact on her general wellbeing. I believe that a thorough discussion needs to take place at panel so that all professionals involved can decide the best way to support TS and her family."

36. In the section headed "*Social Worker analysis rationale for care package*", Ms Pereria stated that "*Due to the nature of the request, I would like to discuss this in panel with managers.*"

37. The Consultant Social Worker, Ms. Hills, added these comments that Mr Sinai described as the "*rationale for the decision*":

"TS receives a considerable level of support from the Disabled Children's Service which has taken into consideration TS's diagnosis, physical and mental health difficulties and the family's circumstances. Though I believe our service has been fair in our assessment and the support we provide, [TS]'s parents see this differently. I support the request for an increase in overnights at Bayis Sheli and at a recent meeting with the head of service, it was agreed that [TS] could receive an additional 2 nights at Bayis Sheli a month. I also agree with the parents request to switch to direct payments from Bikur Cholim. These hours can be used flexibly and around the needs of the family".

38. Ms. Hills concluded:

"One of the outcomes from the assessment was a recommendation for a Child in Need (CIN) Plan for a period of time to ensure the actions from the Team Around the Child meetings were followed up. It would be useful to know from [TS]'s parents whether they're happy to engage with this process, which will entail regular home visits and CIN meetings. The alternative is that the care package is agreed, clear actions identified and [TS]'s needs are reviewed in six months time."

39. The Panel met on 28 March 2023 and was chaired by Mr Jahoda. The "*Summary of Panel discussion*" stated:

"Analysis

The care package is one aspect of the support required for [TS] and her current package is considered appropriate for her level of need. In relation to the recent deterioration in [TS]'s mental health, her parents need to work closely with her clinical psychologist and the psychiatrist at CAMHS disability to agree a plan to support [TS] moving forward. Working collaboratively with CAMHS is likely to result in a positive difference for [TS]. Other actions will help too, such as installing a Safe Space at home which has been recommended by the Occupational Therapist and the team at Evelina Hospital.

It is agreed that there will be an increase to the overnights for [TS] so that two nights of support are provided per month. It is also agreed for a switch from the provider Bikur Cholim to Direct Payments. Given the current high level of support and the challenges being raised by the parents, the care package will be reviewed again in 6 months."

(Emphasis as per original)

40. The Panel's Decision was recorded:

- “- 21 hours per week for personal care via Direct Payments
- 17 hours per week for social activities via Direct Payments
- 12 hours per month to assist with hospital appointments via Direct Payments
- 24 short breaks overnights per year at Bayis Sheli”

41. In the section “*Any additional actions required*” it was recorded that “[c]larification is needed from Mr and Mrs [S] whether they would like [TS] supported on a Child in Need plan or prefer for her to be deallocated to the social work team and her care package to be reviewed in six months time.”. Finally, it was noted that the Care Package would be reviewed in September 2023.

(D) SUBSEQUENT EVENTS AND EVIDENCE FILED FOR THESE PROCEEDINGS

42. On 11 April 2023 the Claimant's solicitors sent a letter of claim under the pre-action protocol to the Defendant. On 27 April 2023 the Defendant's solicitors replied but it has subsequently conceded that its response contained a number of errors, including proceeding on the erroneous belief that the Defendant was being asked to accommodate TS on a full-time basis at Bayis Sheli and that TS was subject to a care order.

43. Mrs TS has filed six witness statements for the purposes of these proceedings and TS's father, Mr BS, has also filed a witness statement. I have considered all of these statements carefully and have referred to them as necessary so far as they bear on my decision.

44. The Defendant filed a witness statement from Mr Stephen Jahoda who is the Interim Head of Service on the Family Intervention Support Service within the Children & Families Service of the London Borough of Hackney. He chaired the 2022 Panel Review as well as the 2023 Panel Review which is the focus of this challenge.

45. Mr Jahoda says in his statement that the Assessment should not be taken in isolation and had to be read in the context of the fact that both he and the social workers had been working with TS and her family for a number of years. Mr Jahoda says that he has reviewed the file again and believes that “*the local authority has analysed the information that has been gathered and has made a suitable provision.*”

46. Mr Jahoda states that “*Hackney asked LS for the reasons why TS' existing care package hours were not sufficient. LS said that the way the hours were being used meant that there were no hours left over by the weekend. She also stated a number of things that made it difficult for her to care for LS (sic) including challenging behaviour, anxiety and sleep management.*”. He says that “*Hackney believes that these are matters that can be addressed through a better routine and behaviour management. Provision was in place for social activities at the weekend as well as 1 overnight stay per month (which we doubled). We believe with better management, LS can provide personal care to TS at the weekend and the child's father (“BS”) is also available to assist.*”

47. In his statement Mr Jahoda comments on the need for a “Child in Need” plan and says: “[t]he Assessment also records the local authority's view that since the family state that they are at breaking point, then we believe it would be beneficial for TS to be supported

through a Child in Need plan. This is a structured multi-facet framework which would ensure that services and support are coordinated and everyone is working together and actions are followed up. LS was previously not in favour of creating a Child in Need plan for TS because it involves more reviews and more regular involvement with the family.”

48. Mr Jahoda provides an explanation as to why the Panel had decided not to increase overnight respite for TS at BS for 2 nights per week:

“We believed that the solution was not to simply separate TS from her mother for 2 nights a week by increasing the amount of respite, which would result in a sudden significant increase to 104 nights per year from 1 night per month in particular since TS had not been assessed as able to attend Bayis Sheli twice every week. That course only focuses on the respite for the mother without addressing the underlying behaviour management and the need to encourage and improve parental management and tolerance. Separating the child from the home and her parents can simply increase the anxiety associated with having the child at home, in particular when she is due to return, and it can similarly lead to increased anxiety and disruption for the child when returning home every week.”

49. Mr Jahoda addresses the question as to whether or not s.20 of the Children Act 1989 is engaged:

“35. The Claimant’s solicitors have introduced section 20 of the Children Act 1989 into this case. The local authority does not believe that its duty under section 20 is engaged in this case. All duties on social services are considered when assessing a child and the absence of an express reference to a particular provision does not mean that we are not aware of it or that it has not been considered. The reason why it is not referred to in this case is because we do not feel that the duty thereunder is engaged. As mentioned, the local authority is aware of its duty and its power under section 20 and they are typically (but not exclusively) engaged when the social worker assesses a child as being without suitable accommodation for varying reasons, ranging from being abandoned or the parents being unable to house them (for example because of abuse or addiction). Typically (but not always) the social worker arranges temporary accommodation (for example with the extended family) or raises a request for approved foster parents. Usually, section 20 is not a long term solution although some children can be housed under section 20. We accept however that section 20 is wide and may arise for whatever circumstance and covers care provision other than accommodation and also long term housing, depending on what each individual child may be facing.

In the present case, the family essentially want a part-week residence at Bayis Sheli under section 20, which is unusual. However the family are not prevented from providing care and accommodation to TS. The real issue is that they want substantially increased regular respite. The local authority believes that it has made suitable and lawful provision for respite and the situation is no different under section 20.”

(E) THE STATUTORY FRAMEWORK

50. There was a substantial degree of agreement between the parties as to the applicable statutory framework and as to its interpretation. The only substantive dispute concerned

the interpretation and application of section 20(1)(c) of the Children Act 1989 (“*the 1989 Act*”).

51. TS is “a child in need” for the purposes of s.17 of the 1989 Act as she is “*disabled*”. Section 17 of the 1989 Act provides:

“(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part) –

(a) to safeguard and promote the welfare of children within their area who are in need; and

(b) so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to meet those children’s needs...

(10) For the purposes of this Part a child shall be taken to be in need if –

(a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) he is disabled;

...

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this

Part –

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.”

(Emphasis added)

52. Where a child in a local authority area appears to be “*in need*”, the local authority must carry out a section 17 assessment of their needs: *R (G) v Barnet LBC* [2003] UKHL 57 [2004] AC 208 at paragraphs 77, 110, 117. As discussed below, although the parties agreed that TS was a child “*in need*” there was a dispute between them as to whether or not an assessment of her as a child in need had taken place: see further paragraphs 64 and 71 below.
53. The assessment should be carried out in accordance with the relevant statutory guidance, in this case: “*Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children*” (July 2018) (“*Working Together*”) - see further below.
54. Section 2 of the Chronically Sick and Disabled Persons Act 1970 (“*the CSDPA 1970*”) provides:

“(4) Where a local authority have functions under Part 3 of the Children Act 1989 in relation to a disabled child and the child is ordinarily resident in their area, they must, in exercise of those functions, make any arrangements within subsection (6) that they are satisfied it is necessary for them to make in order to meet the needs of the child.

(5) Subsection (4) is subject to sections 7(1) and 7A of the Local Authority Social Services Act 1970 (exercise of social services functions subject to guidance or directions of the Secretary of State).

(6) The arrangements mentioned in subsection (4) are arrangements of the following

-
- (a) the provision of practical assistance for the child in the child's home;
- (b) the provision of wireless, television, library or similar recreational facilities for the child, or assistance to the child in obtaining them;
- (c) the provision for the child of lectures, games, outings or other recreational facilities outside the home or assistance to the child in taking advantage of available educational facilities;
- (d) ...”

55. Section 7 of the Local Authorities Social Services Act 1970 requires local authorities, in the exercise of their social service functions, to act under the general guidance of the Secretary of State. As noted above, the applicable statutory guidance where a local authority is assessing the needs of disabled children and their families is *Working Together*. In *R (G) v Lambeth LBC* [2011] EWCA Civ 526 Wilson LJ (as he then was) held that the guidance must be followed unless there is a consideration decision that there is a good reason for it to be followed: see paragraph 17:

“It is inaccurate to describe guidance given under section 7 of the 1970 Act, ie guidance under which local authorities “shall ... act”, as apt to be followed “probably” or only “as a matter of good practice”. In the absence of a considered decision that there is good reason to deviate from it, it must be followed: see the classic exposition by Sedley J in *R v Islington London Borough Council, Ex p Rixon* (1998) 1 CCL Rep 119 , 123J –K”.

56. There was no dispute that the statutory guidance should be followed by the Defendant, rather the dispute between the parties was as to whether the Assessment and the Panel Review indicated that the statutory guidance was in fact followed.

Working Together

57. The status of the guidance is explained at the outset. At paragraph 6 it states: “[t]his documents should be complied with unless exceptional circumstances arise”.

58. At paragraph 60 under a section entitled “*Focusing on the needs and views of the Child*”, the statutory guidance states:

“Every assessment should reflect the unique characteristics of the child within their family and community context. Each child whose referral has been accepted by children’s social care should have their individual needs assessed, including an analysis of the parental capacity to meet those needs whether they arise from issues within the family or the wider community. Frequently, more than one child from the same family is referred and siblings within the family should always be considered. Family assessments that include all members of the family should always ensure that the needs of individual children are distinct considerations.”

59. In a section headed “*Developing a clear analysis*”, the statutory guidance emphasises the need for the information that has been gathered to be analysed. At paragraph 63 it states:

“The social worker should analyse all the information gathered from the assessment, including from a young carer’s, parent carer’s or non-parent carer’s assessment, to decide the nature and level of the child’s needs and the level of risk, if any, they may be facing. The social worker should receive insight and challenge to their emerging hypothesis from their practice supervisors and other relevant practitioners who should challenge the social worker’s assumptions as part of this process. An informed decision should be taken on the nature of any action required and which services should be provided. Social workers, their managers and other practitioners should be mindful of the requirement to understand the level of need and risk in, or faced by, a family from the child’s perspective and plan accordingly, understanding both protective and risk factors the child is facing. The analysis should inform the action to be taken which will have maximum impact on the child’s welfare and outcomes.”

60. At paragraph 71, under a section entitled “*Focusing on outcomes*”, *Working Together* states:

“Where the outcome of the assessment is continued local authority children’s social care involvement, the social worker should agree a plan of action with other practitioners and discuss this with the child and their family. The plan should set out what services are to be delivered, and what actions are to be undertaken, by whom and for what purpose.”

Section 20(1) of the Children Act 1989

61. Section 20(1) CA 1989 imposes a specific duty on local authorities to accommodate certain children in need:

“(1) Every local authority shall provide accommodation for any child in need within their area who appears to them to require accommodation as a result of—
(a) there being no person who has parental responsibility for him;
(b) his being lost or having been abandoned; or
(c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.”

62. I consider the competing arguments as to the application of s.20(1) of the 1989 Act below.

(F) THE GROUNDS OF CHALLENGE

Ground A: did the Defendant assess lawfully the Claimant’s needs?

The parties’ arguments

63. The focus of the Claimant’s criticism was the Defendant’s alleged failure to analyse the Claimant’s needs. Mr Broach, counsel for the Claimant, argued that a careful consideration of the Assessment demonstrated beyond any real doubt that there was no analysis of TS’s needs and that, as a consequence, a “*realistic plan of action*” was not put in place, as required by *Working Together*. He accepted that Mr Jahoda’s evidence provided “*a clearer summary of the reasons taken by the Defendant than any other evidence before the Court, in particular in the contemporary documents.*” Nonetheless he urged me to treat that evidence with considerable caution, relying on the judgment in *R (Nash) v Chelsea College of Art and Design* [2001] EWHC (Admin) 538 at [24]. Mr

Broach argued that the focus should be on the Assessment and the Review Panel documents themselves. In any event, Mr Broach argued, even the ex post facto analysis in Mr Jahoda's statement falls short of what was required. He argued that the justification advanced for denying the level of care required by the family was a general claim of the possible consequence of increased separation on a carer and child. Mr Broach said that any sound analysis would engage with the specific circumstances of the family. He argued that there was no evidence that any such specific engagement was brought to bear.

64. Mr Sinai accepted that there was a duty to analyse the Claimant's needs, but that "*analysis*" was an elastic concept. He argued that, fairly viewed, the Assessment and the Panel Review did demonstrate that the Claimant's needs had been fully analysed. He accepted that he was "*hampered*" by what was actually set out in the documents recording the Assessment and the Panel Review. Mr Sinai accepted that there were aspects of the reasoning in Mr Jahoda's evidence that was not to be found in the Assessment or the Panel Review. Nonetheless he argued that I was entitled to accept Mr Jahoda's evidence as demonstrating that the statutory guidance was followed. Mr Sinai argued that the Defendant did analyse the family's concerns and focused on steps to help manage TS's behaviour, to help with the number of hospital appointments that TS had to attend and that the Defendant had decided to increase respite care from 1 night a month to 2 nights a month. He denied that the social worker's recommendation that the respite care should be increased to an additional 2 nights a month had been over-ruled. He argued that it was significant that the Panel decided that the care package should be reviewed in 6 months time. Finally, he argued that there was in fact a child in need plan already in place from 2022.

Discussion

65. In my judgment the Claimant's criticisms are well-founded.
66. *First*, the Assessment failed to grapple with the family's clear message that they were at crisis point. The fact that TS's family were feeling overwhelmed was recorded by the Defendant. The Assessment stated that the family were at "*crisis point*". The Panel Decision noted that Mrs LS was "*at her limit*" and repeated again that the family were at "*crisis point*". Mr Sinai made clear that that description was accepted by the Defendant as being accurate. Despite that fact, however, the Assessment did not spell out (either explicitly or indeed implicitly) how that "*crisis*" was going to be solved. I accept that it can be seen that there were various decisions made to try to ameliorate the situation, but they failed to engage with the totality of the picture presented. Mr Sinai correctly described TS's needs as being "*extremely complex*" but despite that fact, and despite the detailed explanation from the family as to why TS needed more care (by reference to a detailed account of an average day for TS) there was no detailed engagement by the Defendant with the family's proposals for more care.
67. *Secondly*, as Mr Sinai accepted, any lawful assessment would require detailed engagement with the January letter from the Claimant's solicitors. As he said, that did not require a line-by-line response, but it did require detailed engagement. The Assessment (and the consequent Panel Review) failed to meet that objective. Instead, the Assessment simply recorded that the family were not content with the 2022 care package, that TS's behaviour was deteriorating, and that the family considered that a significant increase in care was needed.
68. *Thirdly*, the reasoning in the Panel Decision in the first paragraph of the Analysis section ("*[t]he care package is one aspect of the support of her current package is*

considered appropriate for her level of need") is no more than an assertion. Critically, it fails to respond to the social worker's view that "*I believe that the family would benefit from an increase on the care package*". There is no explanation at all as to why the social worker's recommendation that the respite care should be increased to two further nights a month was not accepted. In that respect, it is telling that the social worker stated that "*a thorough discussion needs to take place at panel*". There is little real evidence of such a discussion and there is certainly no discussion of the social worker's recommendation just as there is no explanation of why it was not accepted.

69. *Fourthly*, as Mr Sinai candidly stated, his defence of the Defendant is hampered by what is in the documents setting out the impugned decisions. The documents themselves demonstrate that there was a failure to analyse and to assess TS's needs, as required by *Working Together*. For example, as noted earlier, the part of the Panel Review's form that requires an "*update assessment*" plainly offers no such assessment (updated or otherwise): see paragraphs 31 and 32 above. It is telling that Mrs LS's view as to what was needed to keep TS at home were set out by the Panel in clear terms (see above at paragraph 35) but yet there was no response at all to what was said, let alone any analysis of what Mrs LS had said.
70. *Fifthly*, although I take into account that Mr Jahoda was the chair of the Panel both in 2022 and in 2023 and is therefore well placed to provide evidence as to the decision making, I treat with considerable caution reasoning offered in his statement which is not contained (either expressly or by implication) in either the Assessment or the Panel Decision. As Stanley Burnton J held in *Nash* (cited above), "*reasons put forward after the commencement of proceedings must be treated especially carefully*". Mr Jahoda's justification in his statement for not agreeing to a care package that would involve a very significant increase in respite care is not discernible in any way in the Panel Decision. In any event, as the Claimant argued, it no more than an assertion of generic considerations. Insofar as the Defendant now seeks to place reliance on what TS said very recently to a social worker (see paragraphs 11 and 12 above) those comments must be judged in the context of the (undisputed) medical evidence as to the nature of Williams Syndrome that is set out in paragraph 15 above. Moreover, they do not bear on the lawfulness or otherwise of the decisions that are under challenge.
71. *Sixthly*, I cannot accept Mr Sinai's argument that there was in fact already a Child in Need plan in existence from 2022. That is entirely inconsistent with the contemporaneous documents which expressly refer to a Child in Need plan being put into place following the Assessment (see paragraphs 27 and 41 above). The guidance expressly requires that there is such a plan and the fact that the contemporary documents indicate that there was no such plan bears directly on whether Ground A is made out.
72. *Seventhly and finally*, there was no discussion at all in relation to the changed position in respect of Step by Step, notwithstanding the fact that both the Assessment and the subsequent letter from the Claimant's solicitors made it clear that the Manager of Step by Step did not support TS spending more time at Step by Step.
73. It follows therefore that in my judgment the Claimant succeeds on Ground A.

Ground B: was there a breach of the Defendant's duty under 20(1) of the 1989 Act?

74. The parties' joint position was that this Ground gives rise to two issues for determination:

- (a) Did the Defendant fail to determine whether the section 20(1) duty had arisen in the Claimant's case at the time of the Assessment and Review?
 - (b) If the Defendant has now decided that the section 20(1) duty has not arisen, is this decision irrational.
75. I have some concerns as to the formulation of that second issue, but I agree that the first issue accurately expresses the first question I need to address.

(a) Did the Defendant fail to determine whether the section 20(1) duty had arisen in the Claimant's case at the time of the Assessment and Review?

The parties' arguments

76. There is no dispute that there is no express reference in the Assessment or the Review to consideration as to whether or not the section 20(1) duty had arisen. The parties disagree as to the significance of that omission.
77. The Claimant drew attention to what is said to be the Defendant's lack of clarity on this issue. There was no reference to it in the pre-action letter (the letter referring only to the s.20(4) duty) and the Summary and Detailed Grounds did not make a positive case as to whether the section 20(1) duty had been considered. The Claimant argues that Mr Jahoda's evidence in fact did not indicate that the s.20(1) duty was considered at the time. The Claimant argued, by analogy with *R (DAT and BNM) v West Berkshire Council* [2016] EWHC 1876 (Admin), paragraphs 47 and 48, the Defendant's failure to address its mind to s.20(1) was itself a public law error.
78. The Defendant argued that there was no requirement for there to be an express reference to section 20(1) and relied on Mr Jahoda's evidence that "*[a]ll duties on social services are considered when assessing a child and the absence to a particular provision does not mean that we are not aware of it or that it has not been considered*". Mr Jahoda says that the reason why it was not referred to was "*because we do not feel the duty thereunder is engaged*". The Defendant accepted that the section 20(1) duty could encompass respite care.
79. In considering this issue, both parties invited me to follow the approach of Black J (as she then was) in *R (JL) v Islington LBC* [2009] EWHC 458 (Admin). At paragraphs 64-71, Black J gave her reasons for concluding that the duty in s.20(1) of the 1989 Act was absolute (contrasting it with the permissive nature of s.20(4) of the 1989 Act. The judge held that "*[t]he local authority is not liable to all children in need of accommodation. Its duty only arises if they are in need of accommodation as a result of one of the three stipulated conditions which are, in themselves, stringent and drafted in such a way as to identify children who are in fairly dire straits.*" (paragraph 70).
80. At paragraph 83 Black J observed that s.20(1)(c) "*expressly contemplates that the hiatus in accommodation with the person who has been caring for the child need not be permanent and can be for whatever reason. Plainly, a child could qualify for accommodation in reliance on section 20(1)(c), therefore, even if it is known that the problem will be relatively short-lived and the period of accommodation needed finite. Furthermore, provision can still be accommodation under section 20(1) even if it is for 24 hours or less*".
81. Having reviewed the authorities on s.20(1) at paragraphs 93- 94, Black J concluded at paragraph 96:
- "96. It seems to me that the problems with which section 20(1) aims to deal are current problems. The subsection has throughout an appearance of the present tense. The child has to appear to the local authority to require accommodation. This does not look, to me, like the sort of wording that would be used were the draftsman contemplating a duty arising if it appeared to the local authority that the child would be likely to require accommodation tomorrow, for example, or would be likely to require accommodation if forthcoming possession proceedings in relation to its home were successful. If one looks at the condition of "having been

abandoned” (section 20(1)(b)), it is plain that that condition must be in place at the time of the local authority’s consideration. It does not permit of possible abandonment that might be about to happen. If one turns to section 20(1)(c) one might see a significance also in the use of the words “the person who *has* been caring for him”; does this perhaps indicate an assumption that by the time the child presents to the local authority, that person is no longer caring for the child at all or is no longer delivering “suitable care”? The draftsman of the Children Act 1989 spells out elsewhere in the Act situations where action can or must be taken on the basis of something that will or may happen in the future. The obvious example is section 31 which provides that a court may make a care order where “the child concerned is suffering, *or is likely to suffer* , significant harm”. There is no acknowledgment of future risks in section 20(1) . Reinforced by the stringent duty that it imposes, I have concluded that this section is designed to cope with actual crises and not with possible or prospective ones. The local authority has other powers (and duties) to act in relation to these matters, not least by providing for a child under section 20(4), but in my judgment, no duty under section 20(1) arises where the most that can be said is that without assistance, even assistance by way of temporary accommodation, a parent may (or possibly, even, will) be prevented from providing the child with suitable accommodation or care.

97. It follows that I do not consider that the overnight stays that JL has at Lough Road are provided under section 20(1) . I do not have to go so far as to say that short breaks can never come within that section. That issue would have to be determined if it arose in a particular case.”

Discussion

82. The Claimant’s argument that a failure to consider (or to have regard to) the section 20(1) duty would be a public law failure was not challenged by the Defendant. The issue is whether or not the Defendant did consider the duty in the Assessment and/or in the Panel Decision.
83. There is no doubt that in both the Assessment and in the Panel Review there are references to a state of affairs that should give rise to a consideration as to whether or not the s.20(1) duty was engaged. As noted earlier, there are numerous references to the parents being at crisis point such that without additional care (and in particular respite care) they would be unable to carry on: they were at their “*limit*”. TS was, to use Black J’s phrase, in “*fairly dire straits*”. They are references that should have driven the Defendant to consider whether or not section 20(1) was engaged.
84. I have considered the Assessment and the Panel Decision documents very carefully. I have also considered Mr Jahoda’s evidence carefully. I agree with the Claimant that on a plain reading Mr Jahoda does not in fact say that the section 20(1) duty was considered at the time of the Panel meeting. Instead, Mr Jahoda makes a general assertion that all duties are considered by the Defendant and that the Defendant’s position now is that s.20(1) is not engaged. I also note the lack of clarity on this question in the Defendant’s Grounds.
85. In my judgment there is no reliable basis to conclude that the Defendant did consider whether or not its duty under section 20(1) was engaged and accordingly I find in favour of the Claimant on this aspect of Ground B.

(b) Did the Defendant breach its substantive section 20(1) duty?

The parties' arguments

86. The Claimant argued that as TS's family were close to breaking point and that her parents were at risk of no longer being able to provide care to her then there was a duty owed by the Defendant under s.20(1)(c) of the 1989 Act. Mr Broach argued that no reasonable authority could conclude on the facts here that the parents were not prevented from providing TS with suitable accommodation or care. He argued that the situation here was precisely the same as in *G v Kent County Council* [2016] EWHC 1102 (Admin).
87. The Defendant argued that there was no breach of the s.20(1) duty. Whether or not TS's situation fell within s.20(1) was a matter of evaluation for the Defendant (citing Baroness Hale in *R (G) v Southwark LBC* [2009] UKHL 26; [2009] 1 WLR 1299 at paragraph 31). Furthermore, TS's situation fell within the category identified by Black J where "*the most that can be said is that without assistance, even assistance by way of temporary accommodation, a parent may (or possibly even will) be prevented from providing the child with suitable accommodation or care*".

Discussion

88. I accept that whether or not the section 20(1) duty arose was matter of evaluative judgment, though as Lady Hale made clear, it does not give rise to a discretion. As Black J held in *JL*, the duty once engaged is an absolute one.
89. There are certainly features of the evidence that would suggest that the section 20(1) duty was engaged, but the issue is far from being clear cut. On one view the Assessment and the Panel Decision would suggest that the family, whilst in crisis, are not yet prevented from providing TS with accommodation or care. The difficulty here however is that because of the flawed nature of the decision making by the Defendant it is not possible to conclude that a lawful assessment would inevitably have led to the conclusion that section 20(1) was engaged. In my judgment on the basis of the evidence available to the Defendant at the time of the decisions I am unable to find that the only rational conclusion available to the Defendant was that section 20(1) was engaged. Accordingly, I do not find in favour of the Claimant on that aspect of Ground B.

Ground C: irrational and unlawful service provision decision generally

90. The parties agreed that this Ground gave rise to two issues:
- (a) Is the Defendant's care package for the Claimant irrational?
- (b) Has the Defendant's breached its duty to provide a "realistic plan of action" as to how the Claimant's need will be met.

The parties' arguments

91. The Claimant argued that the care package decision was irrational in circumstances where the parents simply could not cope any longer. The irrationality was partly a result of a lack of analysis of the facts available to the Defendant and, to that extent, this Ground overlapped with Ground A. The Claimant argued that the failure to follow the social worker's recommendation was a stark illustration of the irrationality of the decision. Equally reliance on Step by Step was irrational given the evidence from the Step by Step Manager. It could not be said that the care plan was a "*realistic plan of action*" (contrary to the requirements of *Working Together* at paragraph 71).

92. The Defendant relied on its arguments in relation to Ground A and also argued that it could not be said that no reasonable local authority would have made such a decision in respect of respite care. The Defendant denied that the difference between the social worker recommendation and the Panel’s eventual decision was material. The Defendant argued that the Ground essentially concerned a factual dispute where the parents simply disagreed with the Defendant’s evaluative judgment.

Discussion

93. I can deal with this Ground relatively shortly given my findings on Ground A. I have already found that there was a failure to follow *Working Together* and that the decision making in relation to the care package was flawed. To adopt the language of Sedley J in *R v Parliamentary Commissioner for Administration ex p Balchin* [1998] 1 PLR 1 at paragraph 13, this is a “*decision that does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic*”. Consequently, it could not be described as a “*realistic plan of action*”. The Claimant therefore succeeds on Ground C because of the flawed process by which the decision was reached.

(G) DISPOSAL AND RELIEF

94. The Claimant seeks declaratory relief; an order quashing the Assessment and the Review and a mandatory order requiring the Defendant to complete a further Assessment and decision as to a care package.
95. I indicated to the parties at the hearing that, should the claim succeed, I would give a preliminary indication in my judgment as to relief and invite the parties to agree an order accordingly. My provisional view is that I should make a quashing order in relation to the impugned decisions. I would invite the Defendant to agree to maintain the terms of the interim injunction pending the further assessment of TS and decision as to a care package. The alternative option of a suspended quashing order would necessarily extend the court’s involvement with this case. In my judgment it would be in both parties’ interests now to move forward to resolving the care needs of TS without recourse to litigation.